Single Bench

(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL No. 1024 /2006

APPELLANT
Plaintiff

1. Smt. Biran Bai, aged about 60 , *years, W/o Hirasingh By Caste* Harijan
2. Sukhchand, aged about 39 years, S/o Late Hira Singh, by Occupa tion Driver in Forest Department
3. Sukhdev aged about 25 years, S/o Hira Singh

All R/o Village Narayanpur Post *and Tahsil Narayanpur,* Distt. Bastar (C.G)

P.R. No. 36 dated 23/11/06 Presented by Shri Devnarayan Kurrey

VERSUS

RESPONDENTS
Defendants

1. Ram Pyare Dewangan, Aged about *78 years, S/o Late Chamruram By* Caste Koshta, By Occupation Retd. Distt. Excise Officer, R/o Village Narayanpur Distt. Bastar
2. That State of Chhattisgarh through Collector Kanker

RECEIVED COPY 25/11/06 CLERK to A. G. BILASPUR

APPEAL UNDER ORDER 43 RULE 1 (t) READ WITH SUB *RULE (c) OF THE CODE OF CIVIL PROCEDURE*

XI-HC-78

(32)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Misc. Appeal No. 1024 **सन्** 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	05-12-2006 Shri Parag Kotecha, learned counsel for the appellants. Heard on admission. This Miscellaneous Appeal is directed against the order dated 04-09-2006 passed by the First Additional District Judge, Kanker in Misc. Civil Case No.(Unregistered) 0/06 whereby the application under Order-41 Rule-19 read with Order-9 Rule-9 of C.P.C. was dismissed on the ground that the similar application had been dismissed vide order dated 25-11-2004. Brief facts are that the appellant/plaintiff had instituted a Civil Suit No.23-A/1994 which was dismissed by the Civil Judge Class-II, Narayanpur, District-Bastar on 12-02-1996. Against the said judgment and decree, a Civil Appeal No.9-A/1996 was preferred on 21-03-1996 and this appeal was dismissed in default of the appellant/plaintiff on 12-01-2001. An application for restoration of this appeal (Civil Appeal No.9-A/96) was filed under Order-41 Rule-19 read with Order-9 Rule-9 of C.P.C. which was also dismissed in default of the appellant/plaintiff. This application was dismissed vide order dated 25-11-2004. Aggrieved by the said dismissal, the appellant/plaintiff preferred Misc. Appeal No.02/2005 in the High Court. On 22-02-2006, the plaintiff/appellant prayed for withdrawal of this Miscellaneous Appeal with liberty to take appropriate remedy available under law. As a result, this appeal was dismissed as withdrawn granting the aforesaid liberty to the plaintiff/appellant. The plaintiff filed yet another application under Order-41 Rule-19 read with Order-9 Rule-9 of C.P.C. before the First Additional District Judge, Kanker which was again dismissed on the ground that the order passed on 25-11-2004 upon a	

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(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Misc. Appeal No. 1025/ **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

similar application had become final. Aggrieved by the said order, the appellant/plaintiff has preferred this Miscellaneous Appeal.

In view of the withdrawal of the Misc. Appeal No.02/2005 by the plaintiff/appellant, order dated 25-11-2004 passed by the First Additional District Judge, Kanker has become final. A similar application filed under Order-41 Rule-19 read with Order-9 Rule-9 of C.P.C. would therefore not lie before the same Court. In this view of the matter, the dismissal of the subsequent application dated 24-08-2006 passed by the First Additional District Judge, Kanker vide impugned order dated 04-09-2006 cannot be faulted with.

In this view of the matter, this Miscellaneous Appeal has no substance and is dismissed at the stage of admission.

In view of above, the application (M.(C)P.No.2137/2006) for grant of temporary injunction also stands disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Transcript

P.T.O.

11.12.06